

## *SB 700 (Negrete McLeod) – Healing Arts: peer review*

*Introduced February 27, 2009*

This bill modifies disciplinary reporting and peer review policies and procedures related to professionals under the jurisdiction of the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), and the California Board of Podiatric Medicine (CPBM) (boards). Specifically, this bill:

- 1) Increases the amount of information available in a board's central file. Requires specified information to be disclosed to the public about a former licensee. Specifies that information will not be disclosed if a court finds that a peer process was conducted in bad faith.
- 2) Expands the definition of peer review to include a process in which information is reviewed to determine whether a licensee may practice and to determine parameters of that practice.
- 3) Requires the chief of staff of a medical or professional staff, a chief executive officer, medical director, or other administrator of a peer review body, to file a report following a formal investigation within 15 days after a peer review final determination that specified acts may have occurred, including gross negligence, substance abuse, and excessive prescribing of controlled substances.

Rationale: This bill addresses peer review processes and "805 reports" and is similar to SB 820 (Negrete McLeod) in 2009. Section 805 of the Business & Professions Code details the peer review process and reporting related to disciplinary investigations and conclusions related to alleged physician misconduct. SB 820 was vetoed due to concerns about the definition of "serious" cases of incompetence and perceived misalignment with national accreditation requirements that hospitals adopt a zero tolerance policy toward disruptive physician behavior. According to the author, subsequent discussions with the Administration have reduced these concerns.

Background: The term peer review generally refers to when a group of medical professionals review their colleagues' performance. Peer reviews are conducted in many health care settings, including hospitals, clinics, health plans, and medical groups. Peer reviews are not always related to performance concerns, but may also be used in a routine review of a physician's practices. The methods of peer review can vary widely. Under state law, when peer review involves disciplinary action, the review and outcomes must be reported to the respective boards, including the MBC.



AMENDED IN SENATE JANUARY 26, 2010

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 700

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Introduced by Senator Negrete McLeod  
(Coauthor: Senator Aanestad)

February 27, 2009

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An act to amend Sections 800, 803.1, 805, 805.1, 805.5, and 2027 of, and to add ~~Section 805.01~~ *Sections 805.01 and 821.4* to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. ~~Existing law defines the term "peer review body" as including a medical or professional staff of any health care facility or clinic licensed by the State Department of Public Health.~~

This bill would define the term "peer review" ~~and would revise the definition of the term "peer review body" to include a medical or professional staff of other specified health care facilities or clinics for purposes of those provisions.~~

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board;

~~including imposition of a summary suspension of staff privileges, membership, or employment if the summary suspension stays in effect for a period in excess of 14 days. Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licentiate to request a hearing concerning that action.~~

~~This bill would specify that the 805 report must be filed within 15 days of the imposition of the summary suspension regardless of whether a hearing has occurred.~~

~~This bill would also require specified persons to file a report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate departed from the standard of care, as specified, committed or was responsible for a specified adverse event, suffered from mental illness or substance abuse, or engaged in sexual misconduct may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.~~

~~The bill would also require a peer review body that reviews physicians and surgeons to, under specified circumstances, report certain information to the executive director of the Medical Board of California, as specified.~~

~~Existing law requires the board to maintain an 805 report for a period of 3 years after receipt.~~

~~This bill would require the board to maintain the report electronically.~~

~~Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.~~

~~This bill would specify that the boards have the authority to inspect those documents in unredacted form and without a subpoena and would authorize those boards to also inspect any peer review minutes or reports, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary proceeding.~~



Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds, *in a final judgment*, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds, *in a final judgment*, that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California *to include certain exculpatory or explanatory statements in those disclosures or postings and would require the board to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.*

Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction.

This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

The bill would make related nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 800 of the Business and Professions Code  
2     is amended to read:

1 800. (a) The Medical Board of California, the Board of  
2 Psychology, the Dental Board of California, the Osteopathic  
3 Medical Board of California, the State Board of Chiropractic  
4 Examiners, the Board of Registered Nursing, the Board of  
5 Vocational Nursing and Psychiatric Technicians, the State Board  
6 of Optometry, the Veterinary Medical Board, the Board of  
7 Behavioral Sciences, the Physical Therapy Board of California,  
8 the California State Board of Pharmacy, the Speech-Language  
9 Pathology and Audiology *and Hearing Aid Dispensers* Board, the  
10 California Board of Occupational Therapy, and the Acupuncture  
11 Board shall each separately create and maintain a central file of  
12 the names of all persons who hold a license, certificate, or similar  
13 authority from that board. Each central file shall be created and  
14 maintained to provide an individual historical record for each  
15 licensee with respect to the following information:

16 (1) Any conviction of a crime in this or any other state that  
17 constitutes unprofessional conduct pursuant to the reporting  
18 requirements of Section 803.

19 (2) Any judgment or settlement requiring the licensee or his or  
20 her insurer to pay any amount of damages in excess of three  
21 thousand dollars (\$3,000) for any claim that injury or death was  
22 proximately caused by the licensee's negligence, error or omission  
23 in practice, or by rendering unauthorized professional services,  
24 pursuant to the reporting requirements of Section 801 or 802.

25 (3) Any public complaints for which provision is made pursuant  
26 to subdivision (b).

27 (4) Disciplinary information reported pursuant to Section 805,  
28 *including any additional exculpatory or explanatory statements*  
29 *submitted by the licensee pursuant to subdivision (f) of Section*  
30 *805. If a court finds, in a final judgment, that the peer review*  
31 *resulting in the 805 report was conducted in bad faith and the*  
32 *licensee who is the subject of the report notifies the board of that*  
33 *finding, the board shall include that finding in the central file. For*  
34 *purposes of this paragraph, "peer review" has the same meaning*  
35 *as defined in Section 805.*

36 (5) *Information reported pursuant to Section 805.01, including*  
37 *any explanatory or exculpatory information submitted by the*  
38 *licensee pursuant to subdivision (b) of that section.*

39 (b) Each board shall prescribe and promulgate forms on which  
40 members of the public and other licensees or certificate holders

1 may file written complaints to the board alleging any act of  
2 misconduct in, or connected with, the performance of professional  
3 services by the licensee.

4 If a board, or division thereof, a committee, or a panel has failed  
5 to act upon a complaint or report within five years, or has found  
6 that the complaint or report is without merit, the central file shall  
7 be purged of information relating to the complaint or report.

8 Notwithstanding this subdivision, the Board of Psychology, the  
9 Board of Behavioral Sciences, and the Respiratory Care Board of  
10 California shall maintain complaints or reports as long as each  
11 board deems necessary.

12 (c) The contents of any central file that are not public records  
13 under any other provision of law shall be confidential except that  
14 the licensee involved, or his or her counsel or representative, shall  
15 have the right to inspect and have copies made of his or her  
16 complete file except for the provision that may disclose the identity  
17 of an information source. For the purposes of this section, a board  
18 may protect an information source by providing a copy of the  
19 material with only those deletions necessary to protect the identity  
20 of the source or by providing a comprehensive summary of the  
21 substance of the material. Whichever method is used, the board  
22 shall ensure that full disclosure is made to the subject of any  
23 personal information that could reasonably in any way reflect or  
24 convey anything detrimental, disparaging, or threatening to a  
25 licensee's reputation, rights, benefits, privileges, or qualifications,  
26 or be used by a board to make a determination that would affect  
27 a licensee's rights, benefits, privileges, or qualifications. The  
28 information required to be disclosed pursuant to Section 803.1  
29 shall not be considered among the contents of a central file for the  
30 purposes of this subdivision.

31 The licensee may, but is not required to, submit any additional  
32 exculpatory or explanatory statement or other information that the  
33 board shall include in the central file.

34 Each board may permit any law enforcement or regulatory  
35 agency when required for an investigation of unlawful activity or  
36 for licensing, certification, or regulatory purposes to inspect and  
37 have copies made of that licensee's file, unless the disclosure is  
38 otherwise prohibited by law.

39 These disclosures shall effect no change in the confidential status  
40 of these records.

1     ~~SECTION 1. Section 800 of the Business and Professions Code~~  
2     ~~is amended to read:~~

3     ~~800. (a) The Medical Board of California, the Board of~~  
4     ~~Psychology, the Dental Board of California, the Osteopathic~~  
5     ~~Medical Board of California, the State Board of Chiropractic~~  
6     ~~Examiners, the Board of Registered Nursing, the Board of~~  
7     ~~Vocational Nursing and Psychiatric Technicians, the State Board~~  
8     ~~of Optometry, the Veterinary Medical Board, the Board of~~  
9     ~~Behavioral Sciences, the Physical Therapy Board of California,~~  
10    ~~the California State Board of Pharmacy, and the Speech-Language~~  
11    ~~Pathology and Audiology Board shall each separately create and~~  
12    ~~maintain a central file of the names of all persons who hold a~~  
13    ~~license, certificate, or similar authority from that board. Each~~  
14    ~~central file shall be created and maintained to provide an individual~~  
15    ~~historical record for each licensee with respect to the following~~  
16    ~~information:~~

17    ~~(1) Any conviction of a crime in this or any other state that~~  
18    ~~constitutes unprofessional conduct pursuant to the reporting~~  
19    ~~requirements of Section 803.~~

20    ~~(2) Any judgment or settlement requiring the licensee or his or~~  
21    ~~her insurer to pay any amount of damages in excess of three~~  
22    ~~thousand dollars (\$3,000) for any claim that injury or death was~~  
23    ~~proximately caused by the licensee's negligence, error or omission~~  
24    ~~in practice, or by rendering unauthorized professional services,~~  
25    ~~pursuant to the reporting requirements of Section 801 or 802.~~

26    ~~(3) Any public complaints for which provision is made pursuant~~  
27    ~~to subdivision (b).~~

28    ~~(4) Disciplinary information reported pursuant to Section 805.~~  
29    ~~If a court finds that the peer review resulting in the 805 report was~~  
30    ~~conducted in bad faith and the licensee who is the subject of the~~  
31    ~~report notifies the board of that finding, the board shall include~~  
32    ~~that finding in the central file. For purposes of this paragraph, "peer~~  
33    ~~review" has the same meaning as defined in Section 805.~~

34    ~~(5) Information reported pursuant to Section 805.01.~~

35    ~~(b) Each board shall prescribe and promulgate forms on which~~  
36    ~~members of the public and other licensees or certificate holders~~  
37    ~~may file written complaints to the board alleging any act of~~  
38    ~~misconduct in, or connected with, the performance of professional~~  
39    ~~services by the licensee.~~

1 If a board, or division thereof, a committee, or a panel has failed  
2 to act upon a complaint or report within five years, or has found  
3 that the complaint or report is without merit, the central file shall  
4 be purged of information relating to the complaint or report.

5 Notwithstanding this subdivision, the Board of Psychology, the  
6 Board of Behavioral Sciences, and the Respiratory Care Board of  
7 California shall maintain complaints or reports as long as each  
8 board deems necessary.

9 (e) ~~The contents of any central file that are not public records~~  
10 ~~under any other provision of law shall be confidential except that~~  
11 ~~the licensee involved, or his or her counsel or representative, shall~~  
12 ~~have the right to inspect and have copies made of his or her~~  
13 ~~complete file except for the provision that may disclose the identity~~  
14 ~~of an information source. For the purposes of this section, a board~~  
15 ~~may protect an information source by providing a copy of the~~  
16 ~~material with only those deletions necessary to protect the identity~~  
17 ~~of the source or by providing a comprehensive summary of the~~  
18 ~~substance of the material. Whichever method is used, the board~~  
19 ~~shall ensure that full disclosure is made to the subject of any~~  
20 ~~personal information that could reasonably in any way reflect or~~  
21 ~~convey anything detrimental, disparaging, or threatening to a~~  
22 ~~licensee's reputation, rights, benefits, privileges, or qualifications;~~  
23 ~~or be used by a board to make a determination that would affect~~  
24 ~~a licensee's rights, benefits, privileges, or qualifications. The~~  
25 ~~information required to be disclosed pursuant to Section 803.1~~  
26 ~~shall not be considered among the contents of a central file for the~~  
27 ~~purposes of this subdivision.~~

28 ~~The licensee may, but is not required to, submit any additional~~  
29 ~~exculpatory or explanatory statement or other information that the~~  
30 ~~board shall include in the central file.~~

31 ~~Each board may permit any law enforcement or regulatory~~  
32 ~~agency when required for an investigation of unlawful activity or~~  
33 ~~for licensing, certification, or regulatory purposes to inspect and~~  
34 ~~have copies made of that licensee's file, unless the disclosure is~~  
35 ~~otherwise prohibited by law.~~

36 ~~These disclosures shall effect no change in the confidential status~~  
37 ~~of these records.~~

38 SEC. 2. Section 803.1 of the Business and Professions Code  
39 is amended to read:

1 803.1. (a) Notwithstanding any other provision of law, the  
2 Medical Board of California, the Osteopathic Medical Board of  
3 California, and the California Board of Podiatric Medicine shall  
4 disclose to an inquiring member of the public information regarding  
5 any enforcement actions taken against a licensee, including a  
6 former licensee, by the board or by another state or jurisdiction,  
7 including all of the following:

8 (1) Temporary restraining orders issued.

9 (2) Interim suspension orders issued.

10 (3) Revocations, suspensions, probations, or limitations on  
11 practice ordered by the board, including those made part of a  
12 probationary order or stipulated agreement.

13 (4) Public letters of reprimand issued.

14 (5) Infractions, citations, or fines imposed.

15 (b) Notwithstanding any other provision of law, in addition to  
16 the information provided in subdivision (a), the Medical Board of  
17 California, the Osteopathic Medical Board of California, and the  
18 California Board of Podiatric Medicine shall disclose to an  
19 inquiring member of the public all of the following:

20 (1) Civil judgments in any amount, whether or not vacated by  
21 a settlement after entry of the judgment, that were not reversed on  
22 appeal and arbitration awards in any amount of a claim or action  
23 for damages for death or personal injury caused by the physician  
24 and surgeon's negligence, error, or omission in practice, or by his  
25 or her rendering of unauthorized professional services.

26 (2) (A) All settlements in the possession, custody, or control  
27 of the board shall be disclosed for a licensee in the low-risk  
28 category if there are three or more settlements for that licensee  
29 within the last 10 years, except for settlements by a licensee  
30 regardless of the amount paid where (i) the settlement is made as  
31 a part of the settlement of a class claim, (ii) the licensee paid in  
32 settlement of the class claim the same amount as the other licensees  
33 in the same class or similarly situated licensees in the same class,  
34 and (iii) the settlement was paid in the context of a case where the  
35 complaint that alleged class liability on behalf of the licensee also  
36 alleged a products liability class action cause of action. All  
37 settlements in the possession, custody, or control of the board shall  
38 be disclosed for a licensee in the high-risk category if there are  
39 four or more settlements for that licensee within the last 10 years  
40 except for settlements by a licensee regardless of the amount paid

1 where (i) the settlement is made as a part of the settlement of a  
2 class claim, (ii) the licensee paid in settlement of the class claim  
3 the same amount as the other licensees in the same class or  
4 similarly situated licensees in the same class, and (iii) the  
5 settlement was paid in the context of a case where the complaint  
6 that alleged class liability on behalf of the licensee also alleged a  
7 products liability class action cause of action. Classification of a  
8 licensee in either a “high-risk category” or a “low-risk category”  
9 depends upon the specialty or subspecialty practiced by the licensee  
10 and the designation assigned to that specialty or subspecialty by  
11 the Medical Board of California, as described in subdivision (f).  
12 For the purposes of this paragraph, “settlement” means a settlement  
13 of an action described in paragraph (1) entered into by the licensee  
14 on or after January 1, 2003, in an amount of thirty thousand dollars  
15 (\$30,000) or more.

16 (B) The board shall not disclose the actual dollar amount of a  
17 settlement but shall put the number and amount of the settlement  
18 in context by doing the following:

19 (i) Comparing the settlement amount to the experience of other  
20 licensees within the same specialty or subspecialty, indicating if  
21 it is below average, average, or above average for the most recent  
22 10-year period.

23 (ii) Reporting the number of years the licensee has been in  
24 practice.

25 (iii) Reporting the total number of licensees in that specialty or  
26 subspecialty, the number of those who have entered into a  
27 settlement agreement, and the percentage that number represents  
28 of the total number of licensees in the specialty or subspecialty.

29 (3) Current American Board of Medical Specialty certification  
30 or board equivalent as certified by the Medical Board of California,  
31 the Osteopathic Medical Board of California, or the California  
32 Board of Podiatric Medicine.

33 (4) Approved postgraduate training.

34 (5) Status of the license of a licensee. By January 1, 2004, the  
35 Medical Board of California, the Osteopathic Medical Board of  
36 California, and the California Board of Podiatric Medicine shall  
37 adopt regulations defining the status of a licensee. The board shall  
38 employ this definition when disclosing the status of a licensee  
39 pursuant to Section 2027.



1 (6) Any summaries of hospital disciplinary actions that result  
2 in the termination or revocation of a licensee's staff privileges for  
3 medical disciplinary cause or reason, unless a court finds, *in a final*  
4 *judgment*, that the peer review resulting in the disciplinary action  
5 was conducted in bad faith and the licensee notifies the board of  
6 that finding. For purposes of this paragraph, "peer review" has the  
7 same meaning as defined in Section 805. *In addition, any*  
8 *exculpatory or explanatory statements submitted by the licensee*  
9 *electronically pursuant to subdivision (f) of that section shall be*  
10 *disclosed.*

11 (c) Notwithstanding any other provision of law, the Medical  
12 Board of California, the Osteopathic Medical Board of California,  
13 and the California Board of Podiatric Medicine shall disclose to  
14 an inquiring member of the public information received regarding  
15 felony convictions of a physician and surgeon or doctor of podiatric  
16 medicine.

17 (d) The Medical Board of California, the Osteopathic Medical  
18 Board of California, and the California Board of Podiatric Medicine  
19 may formulate appropriate disclaimers or explanatory statements  
20 to be included with any information released, and may by  
21 regulation establish categories of information that need not be  
22 disclosed to an inquiring member of the public because that  
23 information is unreliable or not sufficiently related to the licensee's  
24 professional practice. The Medical Board of California, the  
25 Osteopathic Medical Board of California, and the California Board  
26 of Podiatric Medicine shall include the following statement when  
27 disclosing information concerning a settlement:  
28

29 "Some studies have shown that there is no significant correlation  
30 between malpractice history and a doctor's competence. At the  
31 same time, the State of California believes that consumers should  
32 have access to malpractice information. In these profiles, the State  
33 of California has given you information about both the malpractice  
34 settlement history for the doctor's specialty and the doctor's history  
35 of settlement payments only if in the last 10 years, the doctor, if  
36 in a low-risk specialty, has three or more settlements or the doctor,  
37 if in a high-risk specialty, has four or more settlements. The State  
38 of California has excluded some class action lawsuits because  
39 those cases are commonly related to systems issues such as product  
40 liability, rather than questions of individual professional



1 competence and because they are brought on a class basis where  
2 the economic incentive for settlement is great. The State of  
3 California has placed payment amounts into three statistical  
4 categories: below average, average, and above average compared  
5 to others in the doctor's specialty. To make the best health care  
6 decisions, you should view this information in perspective. You  
7 could miss an opportunity for high-quality care by selecting a  
8 doctor based solely on malpractice history.

9 When considering malpractice data, please keep in mind:

10 Malpractice histories tend to vary by specialty. Some specialties  
11 are more likely than others to be the subject of litigation. This  
12 report compares doctors only to the members of their specialty,  
13 not to all doctors, in order to make an individual doctor's history  
14 more meaningful.

15 This report reflects data only for settlements made on or after  
16 January 1, 2003. Moreover, it includes information concerning  
17 those settlements for a 10-year period only. Therefore, you should  
18 know that a doctor may have made settlements in the 10 years  
19 immediately preceding January 1, 2003, that are not included in  
20 this report. After January 1, 2013, for doctors practicing less than  
21 10 years, the data covers their total years of practice. You should  
22 take into account the effective date of settlement disclosure as well  
23 as how long the doctor has been in practice when considering  
24 malpractice averages.

25 The incident causing the malpractice claim may have happened  
26 years before a payment is finally made. Sometimes, it takes a long  
27 time for a malpractice lawsuit to settle. Some doctors work  
28 primarily with high-risk patients. These doctors may have  
29 malpractice settlement histories that are higher than average  
30 because they specialize in cases or patients who are at very high  
31 risk for problems.

32 Settlement of a claim may occur for a variety of reasons that do  
33 not necessarily reflect negatively on the professional competence  
34 or conduct of the doctor. A payment in settlement of a medical  
35 malpractice action or claim should not be construed as creating a  
36 presumption that medical malpractice has occurred.

37 You may wish to discuss information in this report and the  
38 general issue of malpractice with your doctor.”  
39

(e) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms “enforcement,” “discipline,” or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers’ statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee, including a former licensee under subdivision (a), with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its

1 statement of reasons for its regulations, explains why the validity  
2 of the grouping would be more valid.

3 ~~SEC. 3. Section 805 of the Business and Professions Code is~~  
4 ~~amended to read:~~

5 ~~805. (a) As used in this section, the following terms have the~~  
6 ~~following definitions:~~

7 ~~(1) (A) "Peer review" means a process in which a peer review~~  
8 ~~body reviews the basic qualifications, staff privileges, employment,~~  
9 ~~medical outcomes, and professional conduct of licentiates to~~  
10 ~~determine whether the licentiate may practice or continue to~~  
11 ~~practice in a health care facility, clinic, or other setting providing~~  
12 ~~medical services and, if so, to determine the parameters of that~~  
13 ~~practice.~~

14 ~~(B) "Peer review body" includes:~~

15 ~~(i) A medical or professional staff of any health care facility or~~  
16 ~~clinic specified under Division 2 (commencing with Section 1200)~~  
17 ~~of the Health and Safety Code or of a facility certified to participate~~  
18 ~~in the federal Medicare Program as an ambulatory surgical center.~~

19 ~~(ii) A health care service plan registered under Chapter 2.2~~  
20 ~~(commencing with Section 1340) of Division 2 of the Health and~~  
21 ~~Safety Code or a disability insurer that contracts with licentiates~~  
22 ~~to provide services at alternative rates of payment pursuant to~~  
23 ~~Section 10133 of the Insurance Code.~~

24 ~~(iii) Any medical, psychological, marriage and family therapy,~~  
25 ~~social work, dental, or podiatric professional society having as~~  
26 ~~members at least 25 percent of the eligible licentiates in the area~~  
27 ~~in which it functions (which must include at least one county),~~  
28 ~~which is not organized for profit and which has been determined~~  
29 ~~to be exempt from taxes pursuant to Section 23701 of the Revenue~~  
30 ~~and Taxation Code.~~

31 ~~(iv) A committee organized by any entity consisting of or~~  
32 ~~employing more than 25 licentiates of the same class that functions~~  
33 ~~for the purpose of reviewing the quality of professional care~~  
34 ~~provided by members or employees of that entity.~~

35 ~~(2) "Licentiate" means a physician and surgeon, doctor of~~  
36 ~~podiatric medicine, clinical psychologist, marriage and family~~  
37 ~~therapist, clinical social worker, or dentist. "Licentiate" also~~  
38 ~~includes a person authorized to practice medicine pursuant to~~  
39 ~~Section 2113.~~

1     ~~(3) “Agency” means the relevant state licensing agency having~~  
2     ~~regulatory jurisdiction over the licentiates listed in paragraph (2).~~

3     ~~(4) “Staff privileges” means any arrangement under which a~~  
4     ~~licentiate is allowed to practice in or provide care for patients in~~  
5     ~~a health facility. Those arrangements shall include, but are not~~  
6     ~~limited to, full staff privileges, active staff privileges, limited staff~~  
7     ~~privileges, auxiliary staff privileges, provisional staff privileges,~~  
8     ~~temporary staff privileges, courtesy staff privileges, locum tenens~~  
9     ~~arrangements, and contractual arrangements to provide professional~~  
10    ~~services, including, but not limited to, arrangements to provide~~  
11    ~~outpatient services.~~

12    ~~(5) “Denial or termination of staff privileges, membership, or~~  
13    ~~employment” includes failure or refusal to renew a contract or to~~  
14    ~~renew, extend, or reestablish any staff privileges, if the action is~~  
15    ~~based on medical disciplinary cause or reason.~~

16    ~~(6) “Medical disciplinary cause or reason” means that aspect~~  
17    ~~of a licentiate’s competence or professional conduct that is~~  
18    ~~reasonably likely to be detrimental to patient safety or to the~~  
19    ~~delivery of patient care.~~

20    ~~(7) “805 report” means the written report required under~~  
21    ~~subdivision (b).~~

22    ~~(b) The chief of staff of a medical or professional staff or other~~  
23    ~~chief executive officer, medical director, or administrator of any~~  
24    ~~peer review body and the chief executive officer or administrator~~  
25    ~~of any licensed health care facility or clinic shall file an 805 report~~  
26    ~~with the relevant agency within 15 days after the effective date on~~  
27    ~~which any of the following are imposed on a licentiate as a result~~  
28    ~~of an action of a peer review body:~~

29    ~~(1) A licentiate’s application for staff privileges or membership~~  
30    ~~is denied or rejected for a medical disciplinary cause or reason.~~

31    ~~(2) A licentiate’s membership, staff privileges, or employment~~  
32    ~~is terminated or revoked for a medical disciplinary cause or reason.~~

33    ~~(3) Restrictions are imposed, or voluntarily accepted, on staff~~  
34    ~~privileges, membership, or employment for a cumulative total of~~  
35    ~~30 days or more for any 12-month period, for a medical disciplinary~~  
36    ~~cause or reason.~~

37    ~~(c) If a licentiate undertakes any action listed in paragraph (1),~~  
38    ~~(2), or (3) after receiving notice of a pending investigation initiated~~  
39    ~~for a medical disciplinary cause or reason or after receiving notice~~  
40    ~~that his or her application for membership, staff privileges, or~~

1 employment is denied or will be denied for a medical disciplinary  
2 cause or reason, the chief of staff of a medical or professional staff  
3 or other chief executive officer, medical director, or administrator  
4 of any peer review body and the chief executive officer or  
5 administrator of any licensed health care facility or clinic where  
6 the licensee is employed or has staff privileges or membership  
7 or where the licensee applied for staff privileges, membership,  
8 or employment, or sought the renewal thereof, shall file an 805  
9 report with the relevant agency within 15 days after the licensee  
10 undertakes the action:

11 (1) Resigns or takes a leave of absence from membership, staff  
12 privileges, or employment.

13 (2) Withdraws or abandons his or her application for  
14 membership, staff privileges, or employment.

15 (3) Withdraws or abandons his or her request for renewal of  
16 membership, staff privileges, or employment.

17 (d) For purposes of filing an 805 report, the signature of at least  
18 one of the individuals indicated in subdivision (b) or (c) on the  
19 completed form shall constitute compliance with the requirement  
20 to file the report.

21 (e) An 805 report shall also be filed within 15 days following  
22 the imposition of summary suspension of staff privileges,  
23 membership, or employment, if the summary suspension remains  
24 in effect for a period in excess of 14 days, regardless of whether  
25 a hearing has occurred pursuant to Section 809.2.

26 (f) A copy of the 805 report, and a notice advising the licensee  
27 of his or her right to submit additional statements or other  
28 information pursuant to Section 800, shall be sent by the peer  
29 review body to the licensee named in the report. The information  
30 to be reported in an 805 report shall include the name and license  
31 number of the licensee involved, a description of the facts and  
32 circumstances of the medical disciplinary cause or reason, and any  
33 other relevant information deemed appropriate by the reporter.

34 A supplemental report shall also be made within 30 days  
35 following the date the licensee is deemed to have satisfied any  
36 terms, conditions, or sanctions imposed as disciplinary action by  
37 the reporting peer review body. In performing its dissemination  
38 functions required by Section 805.5, the agency shall include a  
39 copy of a supplemental report, if any, whenever it furnishes a copy  
40 of the original 805 report.

1 If another peer review body is required to file an 805 report, a  
2 health care service plan is not required to file a separate report  
3 with respect to action attributable to the same medical disciplinary  
4 cause or reason. If the Medical Board of California or a licensing  
5 agency of another state revokes or suspends, without a stay, the  
6 license of a physician and surgeon, a peer review body is not  
7 required to file an 805 report when it takes an action as a result of  
8 the revocation or suspension.

9 (g) ~~The reporting required by this section shall not act as a~~  
10 ~~waiver of confidentiality of medical records and committee reports.~~  
11 ~~The information reported or disclosed shall be kept confidential~~  
12 ~~except as provided in subdivision (c) of Section 800 and Sections~~  
13 ~~803.1 and 2027, provided that a copy of the report containing the~~  
14 ~~information required by this section may be disclosed as required~~  
15 ~~by Section 805.5 with respect to reports received on or after~~  
16 ~~January 1, 1976.~~

17 (h) ~~The Medical Board of California, the Osteopathic Medical~~  
18 ~~Board of California, and the Dental Board of California shall~~  
19 ~~disclose reports as required by Section 805.5.~~

20 (i) ~~An 805 report shall be maintained electronically by an agency~~  
21 ~~for dissemination purposes for a period of three years after receipt.~~

22 (j) ~~No person shall incur any civil or criminal liability as the~~  
23 ~~result of making any report required by this section.~~

24 (k) ~~A willful failure to file an 805 report by any person who is~~  
25 ~~designated or otherwise required by law to file an 805 report is~~  
26 ~~punishable by a fine not to exceed one hundred thousand dollars~~  
27 ~~(\$100,000) per violation. The fine may be imposed in any civil or~~  
28 ~~administrative action or proceeding brought by or on behalf of any~~  
29 ~~agency having regulatory jurisdiction over the person regarding~~  
30 ~~whom the report was or should have been filed. If the person who~~  
31 ~~is designated or otherwise required to file an 805 report is a~~  
32 ~~licensed physician and surgeon, the action or proceeding shall be~~  
33 ~~brought by the Medical Board of California. The fine shall be paid~~  
34 ~~to that agency but not expended until appropriated by the~~  
35 ~~Legislature. A violation of this subdivision may constitute~~  
36 ~~unprofessional conduct by the licensee. A person who is alleged~~  
37 ~~to have violated this subdivision may assert any defense available~~  
38 ~~at law. As used in this subdivision, "willful" means a voluntary~~  
39 ~~and intentional violation of a known legal duty.~~

~~(f) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars (\$50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.~~

~~(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiatees to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiatees who are the subject of an 805 report, and not automatically exclude or deselect these licentiatees.~~

*SEC. 3. Section 805 of the Business and Professions Code is amended to read:*

805. (a) As used in this section, the following terms have the following definitions:



1 (1) (A) "Peer review" means both of the following:

2 (i) A process in which a peer review body reviews the basic  
3 qualifications, staff privileges, employment, medical outcomes, or  
4 professional conduct of licentiates to make recommendations for  
5 quality improvement and education, if necessary, in order to do  
6 either or both of the following:

7 (I) Determine whether a licentiate may practice or continue to  
8 practice in a health care facility, clinic, or other setting providing  
9 medical services, and, if so, to determine the parameters of that  
10 practice.

11 (II) Assess and improve the quality of care rendered in a health  
12 care facility, clinic, or other setting providing medical services.

13 (ii) Any other activities of a peer review body as specified in  
14 subparagraph (B).

15 ~~(1)~~

16 (B) "Peer review body" includes:

17 ~~(A)~~

18 (i) A medical or professional staff of any health care facility or  
19 clinic licensed under Division 2 (commencing with Section 1200)  
20 of the Health and Safety Code or of a facility certified to participate  
21 in the federal Medicare Program as an ambulatory surgical center.

22 ~~(B)~~

23 (ii) A health care service plan ~~registered~~ licensed under Chapter  
24 2.2 (commencing with Section 1340) of Division 2 of the Health  
25 and Safety Code or a disability insurer that contracts with  
26 licentiates to provide services at alternative rates of payment  
27 pursuant to Section 10133 of the Insurance Code.

28 ~~(C)~~

29 (iii) Any medical, psychological, marriage and family therapy,  
30 social work, dental, or podiatric professional society having as  
31 members at least 25 percent of the eligible licentiates in the area  
32 in which it functions (which must include at least one county),  
33 which is not organized for profit and which has been determined  
34 to be exempt from taxes pursuant to Section 23701 of the Revenue  
35 and Taxation Code.

36 ~~(D)~~

37 (iv) A committee organized by any entity consisting of or  
38 employing more than 25 licentiates of the same class that functions  
39 for the purpose of reviewing the quality of professional care  
40 provided by members or employees of that entity.



1 (2) "Licentiate" means a physician and surgeon, doctor of  
2 podiatric medicine, clinical psychologist, marriage and family  
3 therapist, clinical social worker, or dentist. "Licentiate" also  
4 includes a person authorized to practice medicine pursuant to  
5 Section 2113 or 2168.

6 (3) "Agency" means the relevant state licensing agency having  
7 regulatory jurisdiction over the licentiates listed in paragraph (2).

8 (4) "Staff privileges" means any arrangement under which a  
9 licentiate is allowed to practice in or provide care for patients in  
10 a health facility. Those arrangements shall include, but are not  
11 limited to, full staff privileges, active staff privileges, limited staff  
12 privileges, auxiliary staff privileges, provisional staff privileges,  
13 temporary staff privileges, courtesy staff privileges, locum tenens  
14 arrangements, and contractual arrangements to provide professional  
15 services, including, but not limited to, arrangements to provide  
16 outpatient services.

17 (5) "Denial or termination of staff privileges, membership, or  
18 employment" includes failure or refusal to renew a contract or to  
19 renew, extend, or reestablish any staff privileges, if the action is  
20 based on medical disciplinary cause or reason.

21 (6) "Medical disciplinary cause or reason" means that aspect  
22 of a licentiate's competence or professional conduct that is  
23 reasonably likely to be detrimental to patient safety or to the  
24 delivery of patient care.

25 (7) "805 report" means the written report required under  
26 subdivision (b).

27 (b) The chief of staff of a medical or professional staff or other  
28 chief executive officer, medical director, or administrator of any  
29 peer review body and the chief executive officer or administrator  
30 of any licensed health care facility or clinic shall file an 805 report  
31 with the relevant agency within 15 days after the effective date ~~of~~  
32 ~~on which~~ any of the following ~~that~~ occur as a result of an action  
33 of a peer review body:

34 (1) A licentiate's application for staff privileges or membership  
35 is denied or rejected for a medical disciplinary cause or reason.

36 (2) A licentiate's membership, staff privileges, or employment  
37 is terminated or revoked for a medical disciplinary cause or reason.

38 (3) Restrictions are imposed, or voluntarily accepted, on staff  
39 privileges, membership, or employment for a cumulative total of

1 30 days or more for any 12-month period, for a medical disciplinary  
2 cause or reason.

3 (c) ~~The~~ *If a licentiate takes any action listed in paragraph (1),*  
4 *(2), or (3) after receiving notice of a pending investigation initiated*  
5 *for a medical disciplinary cause or reason or after receiving notice*  
6 *that his or her application for membership or staff privileges is*  
7 *denied or will be denied for a medical disciplinary cause or reason,*  
8 *the chief of staff of a medical or professional staff or other chief*  
9 *executive officer, medical director, or administrator of any peer*  
10 *review body and the chief executive officer or administrator of*  
11 *any licensed health care facility or clinic where the licentiate is*  
12 *employed or has staff privileges or membership or where the*  
13 *licentiate applied for staff privileges or membership, or sought*  
14 *the renewal thereof, shall file an 805 report with the relevant*  
15 *agency within 15 days after any of the following occur after notice*  
16 *of either an impending investigation or the denial or rejection of*  
17 *the application for a medical disciplinary cause or reason: the*  
18 *licentiate takes the action.*

19 (1) ~~Resignation~~ *Resigns or takes a leave of absence from*  
20 *membership, staff privileges, or employment.*

21 (2) ~~The withdrawal or abandonment of a licentiate's~~ *Withdraws*  
22 *or abandons his or her application for staff privileges or*  
23 *membership.*

24 (3) ~~The~~ *Withdraws or abandons his or her request for renewal*  
25 *of those staff privileges or membership is withdrawn or abandoned.*

26 (d) For purposes of filing an 805 report, the signature of at least  
27 one of the individuals indicated in subdivision (b) or (c) on the  
28 completed form shall constitute compliance with the requirement  
29 to file the report.

30 (e) An 805 report shall also be filed within 15 days following  
31 the imposition of summary suspension of staff privileges,  
32 membership, or employment, if the summary suspension remains  
33 in effect for a period in excess of 14 days.

34 (f) A copy of the 805 report, and a notice advising the licentiate  
35 of his or her right to submit additional statements or other  
36 information, *electronically or otherwise*, pursuant to Section 800,  
37 shall be sent by the peer review body to the licentiate named in  
38 the report. *The notice shall also advise the licentiate that*  
39 *information submitted electronically will be publicly disclosed to*  
40 *those who request the information.*

The information to be reported in an 805 report shall include the name and license number of the licensee involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licensee is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained *electronically* by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any

1 agency having regulatory jurisdiction over the person regarding  
2 whom the report was or should have been filed. If the person who  
3 is designated or otherwise required to file an 805 report is a  
4 licensed physician and surgeon, the action or proceeding shall be  
5 brought by the Medical Board of California. The fine shall be paid  
6 to that agency but not expended until appropriated by the  
7 Legislature. A violation of this subdivision may constitute  
8 unprofessional conduct by the licensee. A person who is alleged  
9 to have violated this subdivision may assert any defense available  
10 at law. As used in this subdivision, "willful" means a voluntary  
11 and intentional violation of a known legal duty.

12 (l) Except as otherwise provided in subdivision (k), any failure  
13 by the administrator of any peer review body, the chief executive  
14 officer or administrator of any health care facility, or any person  
15 who is designated or otherwise required by law to file an 805  
16 report, shall be punishable by a fine that under no circumstances  
17 shall exceed fifty thousand dollars (\$50,000) per violation. The  
18 fine may be imposed in any civil or administrative action or  
19 proceeding brought by or on behalf of any agency having  
20 regulatory jurisdiction over the person regarding whom the report  
21 was or should have been filed. If the person who is designated or  
22 otherwise required to file an 805 report is a licensed physician and  
23 surgeon, the action or proceeding shall be brought by the Medical  
24 Board of California. The fine shall be paid to that agency but not  
25 expended until appropriated by the Legislature. The amount of the  
26 fine imposed, not exceeding fifty thousand dollars (\$50,000) per  
27 violation, shall be proportional to the severity of the failure to  
28 report and shall differ based upon written findings, including  
29 whether the failure to file caused harm to a patient or created a  
30 risk to patient safety; whether the administrator of any peer review  
31 body, the chief executive officer or administrator of any health  
32 care facility, or any person who is designated or otherwise required  
33 by law to file an 805 report exercised due diligence despite the  
34 failure to file or whether they knew or should have known that an  
35 805 report would not be filed; and whether there has been a prior  
36 failure to file an 805 report. The amount of the fine imposed may  
37 also differ based on whether a health care facility is a small or  
38 rural hospital as defined in Section 124840 of the Health and Safety  
39 Code.

(m) A health care service plan ~~registered~~ *licensed* under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 4. Section 805.01 is added to the Business and Professions Code, to read:

805.01. (a) As used in this section, the following terms have the following definitions:

(1) "Agency" has the same meaning as defined in Section 805.

(2) "Formal investigation" means an investigation performed by a peer review body based on an allegation that any of the acts listed in paragraphs (1) to (4), inclusive, of subdivision (b) occurred.

(3) "Licentiate" has the same meaning as defined in Section 805.

(4) "Peer review body" has the same meaning as defined in Section 805.

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file a report with the relevant agency within 15 days after a peer review body makes a *final* decision or recommendation regarding the disciplinary action, *as specified in subdivision (b) of Section 805, resulting in a final proposed action* to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate, that any of the acts listed in paragraphs (1) to (4), inclusive, occurred. ~~A peer review body shall not await a final proposed action, as defined in Section 809.1, for purposes of filing this report.~~

~~(1) The licentiate departed from the standard of care and there was patient harm.~~

~~(2) The licentiate committed or was responsible for the occurrence of an adverse event described in paragraph (1) of subdivision (b) of Section 1279.1 of the Health and Safety Code.~~

1 ~~(3) The licentiate suffered from mental illness or substance~~  
2 ~~abuse.~~

3 ~~(4) The licentiate engaged in sexual misconduct. may have~~  
4 ~~occurred, regardless of whether a hearing is held pursuant to~~  
5 ~~Section 809.2. The licentiate shall receive a notice of the proposed~~  
6 ~~action as set forth in Section 809.1, which shall also include a~~  
7 ~~notice advising the licentiate of the right to submit additional~~  
8 ~~explanatory or exculpatory statements electronically or otherwise.~~

9 *(1) Incompetence, or gross or repeated deviation from the*  
10 *standard of care involving death or serious bodily injury to one*  
11 *or more patients, such that the physician and surgeon poses a risk*  
12 *to patient safety. This paragraph shall not be construed to affect*  
13 *or require the imposition of immediate suspension pursuant to*  
14 *Section 809.5.*

15 *(2) Drug or alcohol abuse by a physician and surgeon involving*  
16 *death or serious bodily injury to a patient.*

17 *(3) Repeated acts of clearly excessive prescribing, furnishing,*  
18 *or administering of controlled substances or repeated acts of*  
19 *prescribing, dispensing, or furnishing of controlled substances*  
20 *without a good faith effort prior examination of the patient and*  
21 *medical reason therefor. However, in no event shall a physician*  
22 *and surgeon prescribing, furnishing, or administering controlled*  
23 *substances for intractable pain, consistent with lawful prescribing,*  
24 *be reported for excessive prescribing and prompt review of the*  
25 *applicability of these provisions shall be made in any complaint*  
26 *that may implicate these provisions.*

27 *(4) Sexual misconduct with one or more patients during a course*  
28 *of treatment or an examination.*

29 *(c) The relevant agency shall, without subpoena, be entitled to*  
30 *inspect and copy the following unredacted documents in the record*  
31 *of any formal investigation required to be reported pursuant to*  
32 *subdivision (b):*

33 *(1) Any statement of charges.*

34 *(2) Any document, medical chart, or exhibit.*

35 *(3) Any opinions, findings, or conclusions.*

36 *(4) Any certified copy of medical records, as permitted by other*  
37 *applicable law.*

38 *(d) The report provided pursuant to subdivision (b) and the*  
39 *information disclosed pursuant to subdivision (c) shall be kept*  
40 *confidential and shall not be subject to discovery, except that the*

1 information may be reviewed as provided in subdivision (c) of  
2 Section 800 and may be disclosed in any subsequent disciplinary  
3 hearing conducted pursuant to the Administrative Procedure Act  
4 (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
5 3 of Title 2 of the Government Code).

6 (e) The report required under this section shall be in addition  
7 to any report required under Section 805.

8 (f) *A peer review body shall not be required to make a report*  
9 *pursuant to this section if that body does not make a final decision*  
10 *or recommendation regarding the disciplinary action to be taken*  
11 *against a licensee based on the body's determination that any of*  
12 *the acts listed in paragraphs (1) to (4), inclusive, of subdivision*  
13 *(b) may have occurred.*

14 SEC. 5. Section 805.1 of the Business and Professions Code  
15 is amended to read:

16 805.1. (a) The Medical Board of California, the Osteopathic  
17 Medical Board of California, and the Dental Board of California  
18 shall, ~~without subpoena~~, be entitled to inspect and copy the  
19 following ~~undated~~ documents in the record of any disciplinary  
20 proceeding resulting in action that is required to be reported  
21 pursuant to Section 805:

22 (1) Any statement of charges.

23 (2) Any document, medical chart, or exhibits in evidence.

24 (3) Any opinion, findings, or conclusions.

25 ~~(4) Any peer review minutes or reports.~~

26 (4) *Any certified copy of medical records, as permitted by other*  
27 *applicable law.*

28 (b) The information so disclosed shall be kept confidential and  
29 not subject to discovery, in accordance with Section 800, except  
30 that it may be reviewed, as provided in subdivision (c) of Section  
31 800, and may be disclosed in any subsequent disciplinary hearing  
32 conducted pursuant to the Administrative Procedure Act (Chapter  
33 5 (commencing with Section 11500) of Part 1 of Division 3 of  
34 Title 2 of the Government Code).

35 SEC. 6. Section 805.5 of the Business and Professions Code  
36 is amended to read:

37 805.5. (a) Prior to granting or renewing staff privileges for  
38 any physician and surgeon, psychologist, podiatrist, or dentist, any  
39 health facility licensed pursuant to Division 2 (commencing with  
40 Section 1200) of the Health and Safety Code, or any health care



1 service plan or medical care foundation, or the medical staff of the  
2 institution shall request a report from the Medical Board of  
3 California, the Board of Psychology, the Osteopathic Medical  
4 Board of California, or the Dental Board of California to determine  
5 if any report has been made pursuant to Section 805 indicating  
6 that the applying physician and surgeon, psychologist, podiatrist,  
7 or dentist has been denied staff privileges, been removed from a  
8 medical staff, or had his or her staff privileges restricted as  
9 provided in Section 805. The request shall include the name and  
10 California license number of the physician and surgeon,  
11 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805  
12 report shall not cause the 805 report to be a public record.

13 (b) Upon a request made by, or on behalf of, an institution  
14 described in subdivision (a) or its medical staff, ~~which is received~~  
15 ~~on or after January 1, 1980,~~ the board shall furnish a copy of any  
16 report made pursuant to Section 805 *as well as any additional*  
17 *exculpatory or explanatory information submitted electronically*  
18 *to the board by the licensee pursuant to subdivision (f) of that*  
19 *section.* However, the board shall not send a copy of a report (1)  
20 if the denial, removal, or restriction was imposed solely because  
21 of the failure to complete medical records, (2) if the board has  
22 found the information reported is without merit, (3) if a court finds,  
23 *in a final judgment,* that the peer review, as defined in Section 805,  
24 resulting in the report was conducted in bad faith and the licensee  
25 who is the subject of the report notifies the board of that finding,  
26 or (4) if a period of three years has elapsed since the report was  
27 submitted. This three-year period shall be tolled during any period  
28 the licensee has obtained a judicial order precluding disclosure  
29 of the report, unless the board is finally and permanently precluded  
30 by judicial order from disclosing the report. If a request is received  
31 by the board while the board is subject to a judicial order limiting  
32 or precluding disclosure, the board shall provide a disclosure to  
33 any qualified requesting party as soon as practicable after the  
34 judicial order is no longer in force.

35 If the board fails to advise the institution within 30 working days  
36 following its request for a report required by this section, the  
37 institution may grant or renew staff privileges for the physician  
38 and surgeon, psychologist, podiatrist, or dentist.

39 (c) Any institution described in subdivision (a) or its medical  
40 staff that violates subdivision (a) is guilty of a misdemeanor and



1 shall be punished by a fine of not less than two hundred dollars  
2 (\$200) nor more than one thousand two hundred dollars (\$1,200).

3 *SEC. 7. Section 821.4 is added to the Business and Professions*  
4 *Code, to read:*

5 *821.4. (a) A peer review body, as defined in Section 805, that*  
6 *reviews physicians and surgeons shall, within 15 days of initiating*  
7 *a formal investigation of a physician and surgeon's ability to*  
8 *practice medicine safely based upon information indicating that*  
9 *the physician and surgeon may be suffering from a disabling mental*  
10 *or physical condition that poses a threat to patient care, report to*  
11 *the executive director of the board the name of the physician and*  
12 *surgeon under investigation and the general nature of the*  
13 *investigation. A peer review body that has made a report to the*  
14 *executive director of the board under this section shall also notify*  
15 *the executive director of the board when it has completed or closed*  
16 *an investigation.*

17 *(b) The executive director of the board, upon receipt of a report*  
18 *pursuant to subdivision (a), shall contact the peer review body*  
19 *that made the report within 60 days in order to determine the status*  
20 *of the peer review body's investigation. The executive director of*  
21 *the board shall contact the peer review body periodically thereafter*  
22 *to monitor the progress of the investigation. At any time, if the*  
23 *executive director of the board determines that the progress of the*  
24 *investigation is not adequate to protect the public, the executive*  
25 *director shall notify the chief of enforcement of the board, who*  
26 *shall promptly conduct an investigation of the matter. Concurrently*  
27 *with notifying the chief of enforcement, the executive director of*  
28 *the board shall notify the reporting peer review body and the chief*  
29 *executive officer or an equivalent officer of the hospital of its*  
30 *decision to refer the case for investigation by the chief of*  
31 *enforcement.*

32 *(c) For purposes of this section, "board" means the Medical*  
33 *Board of California.*

34 *(d) For purposes of this section, "formal investigation" means*  
35 *an investigation ordered by the peer review body's medical*  
36 *executive committee or its equivalent, based upon information*  
37 *indicating that the physician and surgeon may be suffering from*  
38 *a disabling mental or physical condition that poses a threat to*  
39 *patient care. "Formal investigation" does not include the usual*  
40 *activities of the well-being or assistance committee or the usual*

1 quality assessment and improvement activities undertaken by the  
2 medical staff of a health facility in compliance with the licensing  
3 and certification requirements for health facilities set forth in Title  
4 22 of the California Code of Regulations, or preliminary  
5 deliberations or inquiries of the executive committee to determine  
6 whether to order a formal investigation.

7 (e) For purposes of this section, "usual activities" of the  
8 well-being or assistance committee are activities to assist medical  
9 staff members who may be impaired by chemical dependency or  
10 mental illness to obtain necessary evaluation and rehabilitation  
11 services that do not result in referral to the medical executive  
12 committee.

13 (f) Information received by the executive director of the board  
14 pursuant to this section shall be governed by, and shall be deemed  
15 confidential to the same extent as records under subdivision (d)  
16 of Section 805.01. The records shall not be further disclosed by  
17 the executive director of the board, except as provided in  
18 subdivision (b).

19 (g) Upon receipt of notice from a peer review body that an  
20 investigation has been closed and that the peer review body has  
21 determined that there is no need for further action to protect the  
22 public, the executive director of the board shall purge and destroy  
23 all records in his or her possession pertaining to the investigation  
24 unless the executive director has referred the matter to the chief  
25 of enforcement pursuant to subdivision (b).

26 (h) A peer review body that has made a report under subdivision  
27 (a) shall not be deemed to have waived the protections of Section  
28 1157 of the Evidence Code. It is not the intent of the Legislature  
29 in enacting this subdivision to affect pending litigation concerning  
30 Section 1157 or to create any new confidentiality protection except  
31 as specified in subdivision (f).

32 (i) The report required by this section shall be submitted on a  
33 short form developed by the board. The contents of the short form  
34 shall reflect the requirements of this section.

35 (j) Nothing in this section shall exempt a peer review body from  
36 submitting a report required under Section 805 or 805.01.

37 ~~SEC. 7.~~

38 SEC. 8. Section 2027 of the Business and Professions Code is  
39 amended to read:

1     2027. (a) The board shall post on the Internet the following  
2 information in its possession, custody, or control regarding licensed  
3 physicians and surgeons:

4     (1) With regard to the status of the license, whether or not the  
5 licensee is in good standing, subject to a temporary restraining  
6 order (TRO), subject to an interim suspension order (ISO), or  
7 subject to any of the enforcement actions set forth in Section 803.1.

8     (2) With regard to prior discipline, whether or not the licensee  
9 has been subject to discipline by the board or by the board of  
10 another state or jurisdiction, as described in Section 803.1.

11     (3) Any felony convictions reported to the board after January  
12 3, 1991.

13     (4) All current accusations filed by the Attorney General,  
14 including those accusations that are on appeal. For purposes of  
15 this paragraph, "current accusation" shall mean an accusation that  
16 has not been dismissed, withdrawn, or settled, and has not been  
17 finally decided upon by an administrative law judge and the  
18 Medical Board of California unless an appeal of that decision is  
19 pending.

20     (5) Any malpractice judgment or arbitration award reported to  
21 the board after January 1, 1993.

22     (6) Any hospital disciplinary actions that resulted in the  
23 termination or revocation of a licensee's hospital staff privileges  
24 for a medical disciplinary cause or reason. *The posting shall also*  
25 *provide a link to any additional explanatory or exculpatory*  
26 *information submitted electronically by the licensee pursuant to*  
27 *subdivision (f) of Section 805.*

28     (7) Any misdemeanor conviction that results in a disciplinary  
29 action or an accusation that is not subsequently withdrawn or  
30 dismissed.

31     (8) Appropriate disclaimers and explanatory statements to  
32 accompany the above information, including an explanation of  
33 what types of information are not disclosed. These disclaimers and  
34 statements shall be developed by the board and shall be adopted  
35 by regulation.

36     (9) Any information required to be disclosed pursuant to Section  
37 803.1.

38     (b) (1) From January 1, 2003, the information described in  
39 paragraphs (1) (other than whether or not the licensee is in good  
40 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain

1 posted for a period of 10 years from the date the board obtains  
2 possession, custody, or control of the information, and after the  
3 end of that period shall be removed from being posted on the  
4 board's Internet Web site. Information in the possession, custody,  
5 or control of the board prior to January 1, 2003, shall be posted  
6 for a period of 10 years from January 1, 2003. Settlement  
7 information shall be posted as described in paragraph (2) of  
8 subdivision (b) of Section 803.1.

9 (2) The information described in paragraphs (3) and (6) of  
10 subdivision (a) shall not be removed from being posted on the  
11 board's Internet Web site.

12 (3) Notwithstanding paragraph (2) and except as provided in  
13 paragraph (4), if a licensee's hospital staff privileges are restored  
14 and the licensee notifies the board of the restoration, the  
15 information pertaining to the termination or revocation of those  
16 privileges, as described in paragraph (6) of subdivision (a), shall  
17 remain posted for a period of 10 years from the restoration date  
18 of the privileges, and at the end of that period shall be removed  
19 from being posted on the board's Internet Web site.

20 (4) Notwithstanding paragraph (2), if a court finds, *in a final*  
21 *judgment*, that peer review resulting in a hospital disciplinary action  
22 was conducted in bad faith and the licensee notifies the board of  
23 that finding, the information concerning that hospital disciplinary  
24 action posted pursuant to paragraph (6) of subdivision (a) shall be  
25 immediately removed from the board's Internet Web site. For  
26 purposes of this paragraph, "peer review" has the same meaning  
27 as defined in Section 805.

28 (c) The board shall also post on the Internet a factsheet that  
29 explains and provides information on the reporting requirements  
30 under Section 805.

31 (d) The board shall provide links to other Web sites on the  
32 Internet that provide information on board certifications that meet  
33 the requirements of subdivision (b) of Section 651. The board may  
34 provide links to other Web sites on the Internet that provide  
35 information on health care service plans, health insurers, hospitals,  
36 or other facilities. The board may also provide links to any other  
37 sites that would provide information on the affiliations of licensed  
38 physicians and surgeons.

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